

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 17, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUSTIN D.,¹

Plaintiff,

v.

LELAND DUDEK, Acting
Commissioner of Social Security,²

Defendant.

No. 2:24-cv-00266-EFS

**ORDER AFFIRMING THE ALJ'S
DENIAL OF BENEFITS**

Due to lower back pain, bulging discs, right leg pain, anxiety, depression, social anxiety, insomnia, and high blood pressure, Plaintiff Justin D.. claims that

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." *See* LCivR 5.2(c).

² Leland Dudek has been named the Acting Commissioner of Social Security. Pursuant to Federal Rule of Civil Procedure 25(d) and 42 U.S.C. § 405(g), he is hereby substituted as the Defendant.

1 he is unable to work fulltime and applied for supplemental security income
2 benefits. He appeals the denial of benefits by the Administrative Law Judge (ALJ)
3 on the grounds that the ALJ improperly analyzed the opinions of William Roth,
4 MD, improperly assessed Plaintiff's credibility as to his physical impairments, and
5 erred in relying on vocational expert testimony at step five that was tainted by the
6 prior two errors. As is explained below, Plaintiff has not established any
7 consequential error. The ALJ's denial of benefits is affirmed.

8 **I. Background**

9 In October 2020, Plaintiff filed an application for benefits under Title 16,
10 claiming disability beginning January 1, 2017, based on the physical and mental
11 impairments noted above.³ Plaintiff's claim was denied at the initial and
12 reconsideration levels.⁴

13 After the agency denied Plaintiff benefits, ALJ Shawn Bozarth held a video
14 hearing in September 2023, at which Plaintiff appeared with his representative.⁵
15 Plaintiff testified at the hearing and a vocational expert also testified.⁶
16
17
18

19 ³ AR 243-252, 285.

20 ⁴ AR 165, 171.

21 ⁵ AR 38-63.

22 ⁶ *Id.*
23

1 After the hearing, the ALJ issued a decision denying benefits.⁷ The ALJ
2 ruled that he found no basis to reopen a prior claim denied by an ALJ on August
3 14, 2017.⁸ The ALJ also found that Plaintiff had rebutted the presumption of
4 continuing nondisability pursuant to *Chavez v. Bowen*, 844 F.2d 691 (9th Cir. 1998),
5 because the regulations to evaluate back impairments had changed and because
6 Plaintiff alleged a worsening of his mental impairments.⁹ The ALJ found Plaintiff's
7 alleged symptoms were not entirely consistent with the medical evidence and the
8 other evidence.¹⁰ As to medical opinions, the ALJ found:

- 9 • The opinions of consultative examiner A. Phillip Vanoy Gibson, PhD,
10 to be persuasive in part – specifically to the extent that it restricted
11 Plaintiff to a range of unskilled work with adaptive and social
12 functioning limitations.
- 13 • The January 2018 and December 2022 opinions of treating source
14 William Roth, MD, to be not persuasive.
- 15 • The opinions of treating source Nate Wareham, MS, to be not
16 persuasive.

18 ⁷ AR 15-37. Per 20 C.F.R. §§ 404.1520(a)-(g); 416.920(a)-(g), a five-step evaluation
19 determines whether a claimant is disabled.

20 ⁸ AR 18.

21 ⁹ AR 18-19.

22 ¹⁰ AR 26-29.

- The opinions of state agency evaluators Karine Lancaster, MD, and Craig Billinghamurst, MD, to be persuasive in part – specifically to the extent that they opined Plaintiff could perform a range of light work.
- The opinions of state agency evaluators W. Miller Logan, MD, and Susan Daugherty, PhD, to be not persuasive.¹¹

The ALJ also considered the third-party witness statements of Plaintiff's mother, sister, and wife and found they were not generally consistent with the record as a whole.¹² As to the sequential disability analysis, the ALJ found:

- Step one: Plaintiff had not engaged in substantial gainful activity since October 22, 2020, the application date.
- Step two: Plaintiff had the following medically determinable severe impairments: degenerative disc disease of the lumbar spine, generalized anxiety disorder (GAD), and major depressive disorder (MDD).
- Step three: Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments, and the ALJ specifically considered Listings 1.15, 1.16, 12.04, and 12.06.

¹¹ AR 29-31.

¹² AR 27

- RFC: Plaintiff had the RFC to perform light work with the following exceptions:

[Plaintiff] must be allowed to change positions from sitting to standing and back for five minutes each hour while remaining on task at the work station; he could frequently climb, balance, kneel, crouch, and crawl, but he could only occasionally stoop; he could not perform jobs with concentrated exposure to dangerous machinery or moving machine parts or to unprotected heights; he could perform goal-oriented jobs with both simple or detailed instructions; he could perform jobs not done at an assembly line or at a production-quota pace; he could perform jobs with only occasional decision-making, occasional changes of workplace setting, and occasional changes to workplace routine; and he could perform a job that has only occasional contacts with supervisors, co-workers, and customers.

- Step four: Plaintiff has no past relevant work.
- Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as a collator operator (DOT 208.685-010), marker (DOT 209.587-034), and router (DOT 222.587-038).¹³

Plaintiff sought timely review from the Appeals Council and the Appeals Council denied review on November 17, 2023, after which Plaintiff filed suit in this Court.¹⁴

¹³ AR 21-32.

¹⁴ AR 1-7, 240.

II. Standard of Review

The ALJ’s decision is reversed “only if it is not supported by substantial evidence or is based on legal error,”¹⁵ and such error impacted the nondisability determination.¹⁶ Substantial evidence is “more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁷

III. Analysis

Plaintiff seeks relief from the denial of disability on three grounds. He argues the ALJ erred when evaluating the medical opinions and when evaluating

¹⁵ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. § 405(g).

¹⁶ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. § 416.920(a) (recognizing that the court may not reverse an ALJ decision due to a harmless error—one that “is inconsequential to the ultimate nondisability determination”).

¹⁷ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)). *See also* *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court “must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner’s conclusion,” not simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does not indicate that such evidence was not considered[.]”).

1 Plaintiff's subjective complaints regarding his physical impairments, and those
2 errors resulted in a third error at step five. As is explained below, the Court
3 concludes that Plaintiff fails to establish the ALJ erred in his evaluation of the
4 medical opinion evidence, or Plaintiff's symptom reports, and because there was no
5 error at those steps, there was no error at step five.

6 **A. Medical Opinion: Plaintiff fails to establish consequential error.**

7 Plaintiff argues the ALJ erred in his evaluation of the medical opinions.¹⁸
8 Specifically, Plaintiff first argues that the ALJ erred in rejecting the opinions of
9 treating physician, Dr. Roth. Specifically, Plaintiff argues that the ALJ erred in
10 failing to address the specific limitations that Dr. Roth opined Plaintiff would need
11 to lie down to elevate his legs, would miss four or more days of work a month, can
12 never reach with his upper extremities, is limited to frequent handling and
13 fingering, and would be off task 30% of the time; and that the ALJ improperly
14 rejected all of Dr. Roth's opined limitations because Plaintiff had limited and
15 conservative treatment for back pain.¹⁹ Plaintiff also argues that the ALJ failed to
16
17

18 ¹⁸ An ALJ must consider and articulate how persuasive he found each medical
19 opinion, including whether the medical opinion was consistent with and supported
20 by the record. 20 C.F.R. § 416.920c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th
21 Cir. 2022).

22 ¹⁹ ECF No. 8.

adequately discuss the supportability and consistency of Dr. Roth's opinions with the longitudinal record.²⁰

1. Standard

The ALJ was required to consider and evaluate the persuasiveness of the medical opinions and prior administrative medical findings.²¹ The factors for evaluating the persuasiveness of medical opinions and prior administrative medical findings include, but are not limited to, supportability, consistency, relationship with the claimant, and specialization.²² Supportability and consistency are the most important factors,²³ and the ALJ must explain how he considered the supportability and consistency factors when reviewing the medical opinions and support her explanation with substantial evidence.²⁴ The ALJ may consider, but is not required to discuss the following additional factors: the source's relationship to Plaintiff such as length of the treatment, purpose of the treatment relation and

²⁰ *Id.*

²¹ 20 C.F.R. § 416.920c(a), (b).

²² *Id.* § 416.920c(c)(1)–(5).

²³ *Id.* § 416.920c(b)(2).

²⁴ *Id.* § 416.920c(b)(2); *Woods v. Kijakazi*, 32 F.4th a at 785 (“The agency must articulate . . . how persuasive it finds all of the medical opinions from each doctor or other source and explain how it considered the supportability and consistency factors in reaching these findings.”) (cleaned up).

whether the source examined Plaintiff, as well as whether the source had advanced training or experience to specialize in the area of medicine in which the opinion was being given.²⁵ When considering the ALJ's findings, the Court is constrained to the reasons and supporting explanation offered by the ALJ.²⁶ An ALJ is not required to articulate how they considered evidence from nonmedical sources using the requirements in paragraphs (a) through (c).²⁷

2. Dr. Roth's Opinions

On January 17, 2018, Dr. Roth completed a Documentation Request Form for Medical or Disability Condition.²⁸ Dr. Roth stated that Plaintiff suffered from the physical and emotional conditions of lower back pain, anxiety/depression, and borderline personality disorder.²⁹ He checked a box that Plaintiff's conditions limit his ability to work and that he would be able to work 0 hours per week and wrote that Plaintiff cannot sit for long without regularly moving and his anxiety had improved.³⁰ Dr. Roth checked a box that Plaintiff could perform sedentary work

²⁵ *Id.*

²⁶ *See Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (recognizing court review is constrained to the reasons the ALJ gave).

²⁷ 20 C.F.R. § 416.920c(d).

²⁸ AR 402.

²⁹ *Id.*

³⁰ *Id.*

1 and that his condition did not limit his access to accessing services, such as using
2 the telephone, making and keeping appointments, and using transportation
3 services.³¹ Dr. Roth opined that Plaintiff's condition was not permanent and would
4 last 10 months, and that he anticipated Plaintiff would start looking for work in
5 the fall.³² Dr. Roth stated that the treatment plan was for Plaintiff to receive
6 physical therapy and counseling at their offices and said Plaintiff needed physical
7 therapy, work hardening, and control of anxiety.³³

8 On December 15, 2022, Dr. Roth completed a Medical Report.³⁴ Dr. Roth said
9 he had treated Plaintiff from October 20, 2014 to December 15, 2022, that Plaintiff
10 was diagnosed with lower back pain and anxiety, and that Plaintiff's anxiety was
11 worsening.³⁵ He checked a box that Plaintiff would need to either lie down or
12 elevate his feet and explained that Plaintiff would need to occasionally lie down to
13 get pressure off his back.³⁶ He said that Plaintiff's medications may affect driving
14 and his cognitive abilities and that he has back pain and a "fair" prognosis.³⁷

15
16 ³¹ AR 403.

17 ³² *Id.*

18 ³³ AR 403-404.

19 ³⁴ AR 514-516.

20 ³⁵ AR 514.

21 ³⁶ *Id.*

22 ³⁷ *Id.*

1 Dr. Roth checked a box that work on a regular and continuous basis would cause
2 Plaintiff's condition to deteriorate and hand-wrote that Plaintiff can only stand for
3 1 hour before he has to sit down or must move positions frequently, and that
4 Plaintiff has burning sensation down his leg.³⁸

5 Dr. Roth checked boxes that Plaintiff would likely miss 4 or more days of
6 work a month and wrote that Plaintiff would likely be off task for 30% of the day.³⁹

7 Dr. Roth opined that Plaintiff could not even perform the demands of sedentary
8 work, that he could never reach bilaterally, and that bilateral handling and
9 fingering was limited to occasional.⁴⁰ Dr. Roth wrote that the restrictions existed
10 since 2014, and that Plaintiff had back problems since age 16 and cannot engage in
11 heavy lifting or inappropriate lifting.⁴¹ Dr. Roth also stated that Plaintiff's anxiety
12 has not allowed him to have much exposure in public.⁴²

13 3. Relevant Medical Records

14 On April 3, 2017, Plaintiff presented to Dr. Roth for a follow-up visit for low
15 back pain, requesting that he be sent for an MRI and given medication for
16
17

18 ³⁸ *Id.*

19 ³⁹ AR 515.

20 ⁴⁰ *Id.*

21 ⁴¹ AR 516.

22 ⁴² *Id.*

1 heartburn.⁴³ Plaintiff reported that his back pain was located in the lower lumbar
2 spine and radiated into the right and left buttock; was intermittent, moderate in
3 intensity and throbbing and aching; and that the pain began ten years prior when
4 he was twisting.⁴⁴ Plaintiff also reported anxiety disorder characterized by
5 symptoms of apprehension, palpitations, and tachycardia occurring several times a
6 month.⁴⁵ Plaintiff reported that he was taking his hydrocodone as directed and that
7 it relieved 75% of his pain in the last week, with an average pain being 6/10 and a
8 highest pain level of 10/10.⁴⁶ The results of a back examination were Plaintiff's
9 back had normal skin, soft tissue appearance, normal cervical and lordotic curve,
10 and no evidence of edema or acute injury; as well as pain on palpation of the
11 lumbar spinous processes, lumbar spinous interfaces, and lumbar paraspinal
12 muscles; and there was spasm of the left and right paraspinal muscles.⁴⁷

13 On July 12, 2017, Plaintiff presented to Dr. Roth for a follow-up visit for low
14 back pain, requesting that he be sent for an MRI and given medication for
15 heartburn.⁴⁸ Plaintiff reported that he was taking his hydrocodone as directed and
16

17 ⁴³ AR 384.

18 ⁴⁴ *Id.*

19 ⁴⁵ *Id.*

20 ⁴⁶ *Id.*

21 ⁴⁷ AR 386.

22 ⁴⁸ AR 380.

1 that it relieved 75% of his pain in the last week, with an average pain being 6/10
2 and a highest pain level of 10/10.⁴⁹ The results of a back examination were normal
3 other than spasm of the left and right paraspinal muscles.⁵⁰

4 On October 12, 2017, Plaintiff presented to Dr. Roth for a follow-up visit for
5 low back pain, again requesting that he be sent for an MRI and given medication
6 for heartburn.⁵¹ Plaintiff reported that he was taking his hydrocodone as directed
7 and that it relieved 90% of his pain in the last week, with an average pain being
8 3/10 and a highest pain level of 7/10.⁵² The results of a back examination were
9 normal other than spasm of the left and right paraspinal muscles.⁵³

10 On January 4, 2018, Plaintiff presented to Dr. Roth for follow-up for low
11 back pain, radiating into his leg and requested that he be sent for an MRI and
12 given medication for heartburn.⁵⁴ Dr. Roth noted that Plaintiff was also to be
13 evaluated for mild depression with “fairly infrequent” symptoms.⁵⁵ Plaintiff
14 reported that he was taking his hydrocodone as directed and that it relieved 90% of
15

16 ⁴⁹ *Id.*

17 ⁵⁰ AR 382.

18 ⁵¹ AR 375.

19 ⁵² *Id.*

20 ⁵³ AR 377.

21 ⁵⁴ AR 371.

22 ⁵⁵ *Id.*

1 his pain in the last week, with an average pain being 3/10 and a highest pain level
2 of 7/10.⁵⁶ Dr. Roth noted that Plaintiff's current medications were olanzapine,
3 Lisinopril, venlafaxine, gabapentin, naproxen hydrocodone/acetaminophen,
4 omeprazole, zolpidem, and hydroxyzine.⁵⁷ Dr. Roth noted that the results of a back
5 examination were identical to the previous exams with spasm of the left and right
6 paraspinal muscles.⁵⁸ Dr. Roth assessed depression, low back pain, borderline
7 personality disorder, esophagitis due to GERD, chronic pain syndrome, benign
8 hypertension, and hypogonadotropic hypogonadism.⁵⁹

9 On January 17, 2018, Plaintiff was examined by Dr. Roth.⁶⁰ Dr. Roth noted
10 that on examination Plaintiff's back had normal skin, soft tissue appearance,
11 normal cervical and lordotic curve, and no evidence of edema or acute injury.⁶¹ He
12 also noted that there was pain on palpation of the lumbar spinous processes,
13 lumbar spinous interfaces, and lumbar paraspinal muscles; and there was spasm of
14 the left and right paraspinal muscles.⁶² Dr. Roth prescribed hydroxyzine and
15

16 ⁵⁶ *Id.*

17 ⁵⁷ AR 372-373.

18 ⁵⁸ AR 373.

19 ⁵⁹ *Id.*

20 ⁶⁰ AR 369.

21 ⁶¹ *Id.*

22 ⁶² *Id.*

1 ranitidine and recommended that Plaintiff increase his physical activity, contact a
2 support group, and resume social interaction; and that he should alternate using
3 heat and ice packs and do back strengthening exercises at home.⁶³

4 At a March 28, 2018 appointment, Plaintiff stated that he was taking his
5 hydrocodone as directed and that it relieved 85% of his pain in the last week, with
6 an average pain being 6/10 and a highest pain level of 8/10, with a pain level of
7 5/10 when the medication wears off.⁶⁴ His back exam resulted in findings identical
8 to prior visits.⁶⁵ At a June 28, 2018 appointment, Plaintiff stated that he was
9 taking his hydrocodone as directed and that it relieved 85% of his pain in the last
10 week, with an average pain being 4/10 and a highest pain level of 9/10, with a pain
11 level of 7/10 when the medication wears off.⁶⁶

12 Plaintiff presented to Dr. Roth on August 28, 2018, for follow-up for back
13 pain.⁶⁷ Plaintiff reported that he was taking his hydrocodone as directed and that it
14 relieved 90% of his pain in the last week, with an average pain being 5/10 and a
15 highest pain level of 9/10, with a pain level of 7/10 when the medication wears off.⁶⁸

17 ⁶³ *Id.*

18 ⁶⁴ AR 415.

19 ⁶⁵ AR 417.

20 ⁶⁶ AR 409.

21 ⁶⁷ AR 405.

22 ⁶⁸ *Id.*

1 On examination, pain was elicited over the lumbar spinous processes, lumbar
2 spinous interfaces, and lumbar paraspinal muscles; and there was spasm of the left
3 and right paraspinal muscles.⁶⁹ Dr. Roth diagnosed low back pain, generalized
4 anxiety, esophagitis due to GERD, chronic pain syndrome, benign hypertension,
5 and hypogonadotropic hypogonadism.⁷⁰ Dr. Roth noted that Plaintiff had completed
6 physical therapy without improvement and that he uses a cane for ambulation.⁷¹

7 In December 2018, Plaintiff was assessed with hypogonadotropic
8 hypogonadism and was sent for follow-up testosterone testing.⁷² At a follow-up visit
9 in March 2019, Plaintiff reported chronic pain and stated that his pain in the last
10 week was an of 7/10 and a highest pain level of 9/10, with a pain level of 7/10 when
11 the medication wears off, and was 90% controlled by his medication.⁷³

12 In June 2019, Plaintiff reported that he was taking his hydrocodone as
13 directed and that it relieved 85% of his pain in the last week, with an average pain
14 being 7/10 and a highest pain level of 9/10, with a pain level of 7/10 when the
15 medication wears off.⁷⁴ Dr. Roth diagnosed chronic pain syndrome, low back pain,
16

17 ⁶⁹ AR 407.

18 ⁷⁰ *Id.*

19 ⁷¹ *Id.*

20 ⁷² AR 483.

21 ⁷³ AR 479.

22 ⁷⁴ AR 476.

1 and hypertension and refilled Plaintiff's prescription for hydrocodone.⁷⁵ On August
2 5, 2019, Plaintiff presented to Dr. Roth and was noted to have low back pain; major
3 depressive disorder, single episode, moderate; chronic pain syndrome; borderline
4 personality disorder; benign hypertension; and hypogonadotropic hypogonadism.⁷⁶
5 On September 5, 2019, Plaintiff said he was taking his hydrocodone as directed
6 and that it relieved 85% of his pain in the last week, with an average pain being
7 6/10 and a highest pain level of 9/10, with a pain level of 7/10 when the medication
8 wears off. ⁷⁷ Dr. Roth diagnosed chronic pain syndrome, low back pain, essential
9 hypertension, and sleep disorders.⁷⁸ On December 17, 2019, Plaintiff reported
10 identical pain levels to those reported in September 2019.⁷⁹

11 At a follow up visit with Dr. Roth on September 1, 2020, Plaintiff reported
12 that he was taking his hydrocodone as directed and that it relieved 85% of his pain
13 in the last week, with an average pain being 6/10 and a highest pain level of 9/10,
14
15
16
17

18 ⁷⁵ AR 478.

19 ⁷⁶ AR 452.

20 ⁷⁷ AR 472.

21 ⁷⁸ AR 474.

22 ⁷⁹ AR 469.

1 with a pain level of 8/10 when the medication wears off.⁸⁰ Examination findings
2 were identical to previous exam findings.⁸¹

3 On December 21, 2020, Plaintiff presented to Dr. Roth for flu vaccination.⁸²
4 Plaintiff reported that he was taking his hydrocodone as directed and that it
5 relieved 85% of his pain in the last week, with an average pain being 6/10 and a
6 highest pain level of 9/10, with a pain level of 8/10 when the medication wears off.⁸³
7 The results of his back exam were identical to those of prior examinations.⁸⁴ At an
8 appointment on May 11, 2020, Plaintiff reported the same pain levels.⁸⁵

9 On April 19, 2021, Plaintiff presented to Dr. Roth for follow-up for back
10 pain.⁸⁶ Plaintiff reported that he was taking his hydrocodone as directed and that it
11 relieved 90% of his pain in the last week, with an average pain being 5/10 and a
12 highest pain level of 9/10, with a pain level of 7/10 when the medication wears off.⁸⁷

15 ⁸⁰ AR 463.

16 ⁸¹ AR 464.

17 ⁸² AR 459.

18 ⁸³ *Id.*

19 ⁸⁴ AR 460.

20 ⁸⁵ AR 467.

21 ⁸⁶ AR 456.

22 ⁸⁷ *Id.*

4. Analysis

The ALJ gave the following reasoning as to his consideration of Dr. Roth's opinions:

The claimant's primary care provider, Dr. Roth, also prepared medical opinions. Dr. Roth opined in January 2018 for WorkFirst that the claimant was restricted to range of sedentary work, adding that he could "not sit for long without frequently moving or position changes." (Exhibit B2F, pages 2-4.)

Dr. Roth prepared a more elaborate medical opinion in December 2022, opining that the claimant was unable to perform even a range of sedentary work, that he required manipulative limitations, that he would be off-task 30 percent or more of the workday, and that he would be absent from work 25 percent or more of the work month. (Exhibit B7F, pages 1-3.)

The undersigned found that Dr. Roth's respective January 2018 and December 2022 medical opinions were not persuasive because he provided little or no explanation or other support for his conclusions. Dr. Roth did not cite any specific objective medical evidence to support his conclusions, and there was otherwise no obvious support for them in the claimant's medical record. Moreover, Dr. Roth's conclusions were inconsistent with the claimant's medical record, specifically his generally normal musculoskeletal and neurological examination findings with no signs of acute distress or other pain behavior or of impaired ambulation or gait, motor strength, or sensation as discussed above.⁸⁸

Plaintiff argues that the ALJ erred in failing to provide a sufficient level of specificity to support his reasoning; that the ALJ erred in finding that Plaintiff's musculoskeletal examinations were generally normal; and that the ALJ failed to

88 AR 30.

1 consider MRIs performed in 2014 and 2016 that indicated bulging discs with
2 effacement of the right L4 nerve root at the L4-L5 level.⁸⁹

3 While the ALJ's reasoning could be better articulated, he adequately
4 explained that Dr. Roth did not cite to any specific evidence in his opinions, either
5 in his own examinations or in the record itself.⁹⁰ While Dr. Roth has administered
6 narcotic pain medication to Plaintiff over a period of time, he has not indicated the
7 need for any other such treatment as further imaging studies, referral to a
8 specialist,⁹¹ or injections, for example. Additionally, although not referenced by the
9 ALJ, it was the opinion of Dr. Roth in 2018 that Plaintiff's limitations would only
10 be expected to last for 10 months, and that Plaintiff should be attending a "work
11 hardening" program that would prepare him to work.⁹² There is no indication in
12 the record that Plaintiff ever attended a work hardening program after Dr. Roth's
13 recommendation.

14
15
16
17 ⁸⁹ ECF No. 8.

18 ⁹⁰ AR 30.

19 ⁹¹ Dr. Roth is a family medicine doctor with specialty in treating hypertension,
20 diabetes, and hypothyroidism. Roth Medical Clinic, *Staff – William T. Roth, MD*,
21 www.rothmedicalclinic.com (last viewed March 4, 2025).

22 ⁹² AR 403-04.

1 The Court notes that on one occasion Dr. Roth acknowledged that Plaintiff
2 used a cane for ambulation.⁹³ But the Court finds that any failure on the part of
3 the ALJ to include a limitation to the use of a cane for ambulation is harmless
4 because the ALJ elicited testimony from the VE that the three representative jobs
5 cited by the VE, and subsequently the ALJ decision, could be performed if a
6 limitation were included providing for use of a cane.⁹⁴

7 It is Plaintiff's contention that the ALJ could have developed the record
8 further due to an absence of supporting evidence.⁹⁵ But the Commissioner has
9 pointed out that the duty of an ALJ to develop the record is triggered when there is
10 insufficient evidence in the record on which to make a decision.⁹⁶ Here, there was
11 not a lack of evidence per se. There were records in the file of over twenty separate
12 office visits made over a period of 4 years, with detailed notes of treatment and
13 examination.⁹⁷

14 Plaintiff asserts that the ALJ erred by "simply substituting his own lay
15 findings for those of" Dr. Roth.⁹⁸ This is simply not true. The ALJ considered not
16

17 ⁹³ AR 407.

18 ⁹⁴ AR 58-59.

19 ⁹⁵ ECF No. 8.

20 ⁹⁶ ECF No. 16.

21 ⁹⁷ AR 367-400, 452-455, 456-508.

22 ⁹⁸ ECF No. 8, pg. 11.

1 only Dr. Roth's opinions, but also the opinions of state agency medical experts Dr.
2 Lancaster and Dr. Billinghamurst and found their opinions that Plaintiff could
3 perform work at the light level to be persuasive.

4 Plaintiff is correct that the ALJ is required to consider both the
5 supportability of an opinion and the consistency of that opinion with the record as
6 a whole. But there is no requirement that the ALJ use the actual wording of
7 supportability or consistency. Here, the ALJ did in fact properly consider those
8 factors, although he did not use those exact words.

9 Given that Dr. Roth's opinions were inconsistent with each other, failed to
10 cite to supporting evidence, and were inconsistent with the record as a whole, the
11 Court concludes that the ALJ's reasoning was not improper. Because the Court
12 concludes that Dr. Roth's opinions lacked explanation or support, were inconsistent
13 with each other, and were inconsistent with the medical record as a whole, the ALJ
14 did not err in rejecting the opinions. The Court thus concludes that Plaintiff failed
15 to establish consequential error in the ALJ's consideration of Dr. Roth's opinions.

16 5. Summary

17 Because the ALJ committed no error in his consideration of the opinions of
18 Dr. Roth, the Court finds that no consequential error occurred and a remand is not
19 warranted.

20 **B. Symptom Reports: Plaintiff fails to establish consequential error**

21 Plaintiff argues the ALJ failed to properly assess his subjective complaints
22 regarding physical impairments only. He argues that the ALJ erred in finding that
23

1 his subjective complaints were not consistent with the record and in reasoning that
2 his allegations were inconsistent with lack of treatment for a back impairment.⁹⁹
3 Plaintiff argues that the ALJ erred in faulting him for failing to seek treatment
4 due to financial limitations, citing caselaw that holds that a claimant should not be
5 held to have refused treatment if he was unable to afford the treatment.¹⁰⁰

6 1. Standard

7 When examining a claimant's symptoms, the ALJ utilizes a two-step inquiry.
8 "First, the ALJ must determine whether there is objective medical evidence of an
9 underlying impairment which could reasonably be expected to produce the pain or
10 other symptoms alleged."¹⁰¹ Second, "[i]f the claimant meets the first test and there
11 is no evidence of malingering, the ALJ can only reject the claimant's testimony
12 about the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing
13 reasons' for the rejection."¹⁰² General findings are insufficient; rather, the ALJ
14 must identify what symptom claims are being discounted and what evidence
15
16
17

18 ⁹⁹ ECF No. 6.

19 ¹⁰⁰ *Id.*

20 ¹⁰¹ *Molina*, 674 F.3d at 1112.

21 ¹⁰² *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter*, 504
22 F.3d at 1036).

1 undermines these claims.¹⁰³ “The clear and convincing standard is the most
2 demanding required in Social Security cases.”¹⁰⁴ Therefore, if an ALJ does not
3 articulate specific, clear, and convincing reasons to reject a claimant’s symptoms,
4 the corresponding limitations must be included in the RFC.¹⁰⁵

5 2. Testimony

6 On September 27, 2023, Plaintiff appeared with his attorney via video for a
7 hearing before ALJ Shawn Bozarth.¹⁰⁶ Plaintiff testified, and a vocational expert
8 (VE) testified.¹⁰⁷

9
10 a. Plaintiff’s testimony

11
12 ¹⁰³ *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995), and *Thomas v.*
13 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
14 explain why he discounted claimant’s symptom claims)).

15 ¹⁰⁴ *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r*
16 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

17 ¹⁰⁵ *Lingenfelter*, 504 F.3d at 1035 (“[T]he ALJ failed to provide clear and convincing
18 reasons for finding Lingenfelter’s alleged pain and symptoms not credible, and
19 therefore was required to include these limitations in his assessment of
20 Lingenfelter’s RFC.”).

21 ¹⁰⁶ AR 38-63.

22 ¹⁰⁷ *Id.*

1 When asked if he had outstanding medical records, Plaintiff's attorney
2 stated that Plaintiff's doctor wanted him to get a neurosurgery consult but that
3 before he could see a neurosurgeon, he would need to attend physical therapy and
4 get an MRI and the only physical therapist in his town did not take his
5 insurance.¹⁰⁸

6 Plaintiff said the highest grade he completed was the ninth grade and he did
7 not have a GED.¹⁰⁹ He said that since 2017 he had worked for 2 days doing snow
8 plowing and had been fired because he was in pain and could not do the work.¹¹⁰
9 His wife worked and they got welfare until 2018, but were now only on Medicaid.¹¹¹
10 Plaintiff said he had a license and could drive but had no car.¹¹² He said he was
11 limited in taking public transportation by his anxiety when around others.¹¹³
12 Plaintiff said he lived with his wife and his 17 year old son, that he is six feet tall
13 and weighs 340 pounds, and that he is right handed.¹¹⁴

14
15
16 ¹⁰⁸ AR 41.

17 ¹⁰⁹ AR 42.

18 ¹¹⁰ *Id.*

19 ¹¹¹ *Id.*

20 ¹¹² AR 43.

21 ¹¹³ *Id.*

22 ¹¹⁴ *Id.*

1 Plaintiff testified that he was prescribed a cane by Dr. Roth and that he
2 usually holds it in his right hand but at times holds it in his left hand if his left leg
3 hurts more.¹¹⁵ He said that because his wife works, he will do light things to help
4 out like laundry or dishes if there are not too many.¹¹⁶

5 Plaintiff said he cannot afford the physical therapy office where he lives and
6 that he is at a crossroads with care because he cannot get an MRI until he has
7 completed physical therapy.¹¹⁷ He said that his mental health issues were treated
8 with medication and that he had counseling in years prior, both as a child and an
9 adult, but did not trust counselors.¹¹⁸ He said he had anxiety and depression and
10 that he gets depressed due to his physical condition and that even the thought of
11 seeing his wife's family will give him too much anxiety to sleep.¹¹⁹ He said that he
12 can bath but only does it once a week or week and a half.¹²⁰ He said that he will
13 only tie his shoes once and that he wears sweat pants and pull on clothes and
14 changes every three to four days.¹²¹

15
16 ¹¹⁵ AR 44.

17 ¹¹⁶ *Id.*

18 ¹¹⁷ AR 45.

19 ¹¹⁸ *Id.*

20 ¹¹⁹ AR 45-46.

21 ¹²⁰ AR 46.

22 ¹²¹ *Id.*

1 Plaintiff said that he will cook with a microwave and that his wife keeps
2 track of his medications.¹²² He said his only exercise is walking around the house
3 and that he has no friends because he has been wronged by past friends and is
4 anxious about meeting new people.¹²³ He said that he watches football, jokes with
5 his children, and sits outside and that before his back injury he liked to garden.¹²⁴
6 He has a grown daughter as well as one minor son who lives with him and one
7 minor daughter who does not live with him.¹²⁵ Plaintiff said that because they have
8 no car he and his wife don't go to restaurants but at times order in, and that when
9 they had a car would occasionally go for a drive.¹²⁶ He said that his former hobbies
10 were working on cars and gardening and he cannot do either now.¹²⁷ He said that
11 he watches several football teams and that the majority of the time he raises his
12 legs because they burn and tingle.¹²⁸

13
14
15
16 ¹²² AR 46-47.

17 ¹²³ AR 47.

18 ¹²⁴ *Id.*

19 ¹²⁵ AR 47-48.

20 ¹²⁶ AR 48.

21 ¹²⁷ *Id.*

22 ¹²⁸ AR 49.

1 Plaintiff testified that on a typical day he raises his legs for 45 minutes to an
2 hour about three to four times a day and that he uses a heating pad.¹²⁹ He said
3 that his legs were raised up to his chin level.¹³⁰ He said that in a typical day he is
4 sitting most of the time because standing and walking strains his back and make
5 his legs wobbly.¹³¹ He said that he can stand for five to ten minutes before having
6 to sit on a typical day but that on a bad day he is in bed from two thirds of the day
7 to the entire day.¹³² He said that in the last three years in a typical month he had
8 bad days for half of each month.¹³³

9 Plaintiff testified that he took gabapentin and narcotic pain medicine and
10 that it made him constipated and drowsy so he would unintentionally doze off.¹³⁴
11 He said that he would doze off two to three times a week and that he also took naps
12 during the week.¹³⁵ Plaintiff said he napped when he did not get a good night's
13 sleep due to pain and the naps lasted for two to three hours.¹³⁶ He said he takes

14
15 ¹²⁹ AR 49.

16 ¹³⁰ AR 49-50.

17 ¹³¹ AR 50.

18 ¹³² AR 50-51.

19 ¹³³ AR 51.

20 ¹³⁴ *Id.*

21 ¹³⁵ AR 52.

22 ¹³⁶ *Id.*

1 trazodone to sleep and that it helps a quarter of the time.¹³⁷ Plaintiff testified that
2 he was taking trazadone, hydrocodone, Lisinopril, gabapentin, olanzapine,
3 famotidine, and metformin and that he has diabetes.¹³⁸

4 Plaintiff testified that it is hard to concentrate when he is in pain and that
5 he has missed crucial plays when watching football.¹³⁹ He said he could wash
6 dishes for 10 minutes but would then need to sit.¹⁴⁰ He said that he gets irritable
7 and will curse or raise his voice, and that he will tell his wife and son to go away
8 and leave him alone.¹⁴¹

9 *b. Vocational expert testimony*

10 LaKeisha Rodgers, PhD, testified as a vocational expert.¹⁴² When given a
11 hypothetical consistent with the exertional limitations only of the ALJ's formulated
12 RFC, the VE testified that the individual could perform the jobs of marker (DOT
13 209.587-034), collator operator (DOT 208.685-010), and router (DOT 222.587-
14 038).¹⁴³ When given a hypothetical that reduced handling and fingering to

15
16 ¹³⁷ *Id.*

17 ¹³⁸ AR 52-53.

18 ¹³⁹ AR 53-54.

19 ¹⁴⁰ AR 54.

20 ¹⁴¹ *Id.*

21 ¹⁴² AR 55-63.

22 ¹⁴³ AR 55-56.

occasional and prohibited overhead reaching, the VE stated the jobs would be eliminated and offered the substitute jobs of usher, school bus monitor, and child attendant, with a sum total of 13,000 jobs in the national economy.¹⁴⁴ When given a hypothetical to add the use of a cane to ambulate and asked if the jobs in the first or second hypothetical would remain, the VE stated that they would.¹⁴⁵ As a fourth hypothetical, the ALJ added the nonexertional requirements consistent with the ALJ's formulated hypothetical RFC and asked if the jobs from the first or second hypothetical would remain and the VE testified that only the jobs for the first hypothetical would remain.¹⁴⁶ When asked if the jobs for hypothetical one remained if there was a limitation to both frequent handling and fingering the use of a cane, the VE stated that they would remain.¹⁴⁷ When asked if the jobs would remain if the individual needed a ten minute break each hour or would be absent two days a month, the VE stated they would not remain.¹⁴⁸

The VE testified that the tolerance for unscheduled absenteeism is one day per month and the tolerance for off-task behavior is 10%.¹⁴⁹ When asked if the

¹⁴⁴ AR 56-57.

¹⁴⁵ AR 57.

¹⁴⁶ *Id.*

¹⁴⁷ AR 58-59.

¹⁴⁸ AR 59.

¹⁴⁹ AR 60.

1 individual needed an additional break that would not be consistent with
2 competitive employment.¹⁵⁰ She also testified that an individual would not be
3 allowed to raise their legs above waist level.¹⁵¹ When asked if an individual would
4 be able to stay employed if they could only complete one third of a one hour
5 training or complete one third of a full day training, she said no.¹⁵² When asked if
6 an individual would be allowed to raise his voice and swear at his supervisor, the
7 VE stated that they would not.¹⁵³ She said that reaching for all three jobs identified
8 in hypothetical one was frequent.¹⁵⁴

9 3. The ALJ's Findings and Analysis of those Findings

10 The ALJ considered Plaintiff's complaints regarding his back impairments
11 and found that they were not generally consistent with the record as a whole.¹⁵⁵
12 The ALJ reasoned that Plaintiff's complaints were inconsistent with this routine
13 and conservative course of treatment, with his generally normal findings on
14 examination, and with his reported functioning.¹⁵⁶

15
16 ¹⁵⁰ *Id.*

17 ¹⁵¹ AR 60-61.

18 ¹⁵² AR 61.

19 ¹⁵³ AR 61-62.

20 ¹⁵⁴ AR 62.

21 ¹⁵⁵ AR 27.

22 ¹⁵⁶ AR 27-28.

1 The ALJ first addressed his reasoning regarding the inconsistency of
2 Plaintiff's statements with his course of treatment, stating:

3 As discussed above, the claimant's medical record shows that he has
4 severe degenerative changes at the L2-L3 and L4-L5 disc levels, but
5 that those changes have prompted limited treatment. His treatment
6 has primarily consisted of pain management, which has included
7 Baclofen, Gabapentin, and Hydrocodone. He repeatedly reported that
8 those medications provided up to 85 percent pain relief, but he did not
report any side-effects from them. The effects of the claimant's obesity
likely contributed to his need for pain management, but notably did
not prompt any specific weight loss treatment. Moreover, the
claimant's examination findings further supported that his course of
treatment was effective.¹⁵⁷

9 He then went on to address his reasoning that Plaintiff's subjective
10 complaints were not supported by the physical examinations, and noted the
11 following:

12 His treatment notes show that he presented with muscle spasms or
13 tenderness over his lumbar spine in September and December 2020,
14 but that he has otherwise had normal or unremarkable
15 musculoskeletal and neurological examination findings since
16 September 2019. Those normal findings included that the claimant
17 did not show signs of acute distress or other pain behavior or of
impaired ambulation or gait, motor strength, or sensation. The
claimant's positive response to pain management and generally
normal musculoskeletal and neurological examination findings
indicated that his back condition and the effects of his obesity were
relatively mild and had a limited impact on his physical functioning.
(See Exhibits B1F-B3F, B5F, and B6F throughout.)¹⁵⁸

18
19 The ALJ further reasoned:
20

21 ¹⁵⁷ AR 27.

22 ¹⁵⁸ *Id.*
23

1 Furthermore, the claimant's courses of treatment for his back
2 condition, obesity, GAD, and MDD and generally normal examination
3 findings greatly undermined the alleged severity of his symptoms. If
4 the claimant's symptoms were as severe as alleged, they would have
5 likely been more resistant to pain management, prompted more
6 aggressive mental health treatment, or presented more consistently or
7 dramatically on examination. However, they did not. Similarly, if the
8 side-effects of the claimant's medications were as severe as alleged, he
9 would have likely reported them, but he did not. As such, the alleged
10 intensity, persistence, and limiting effects of the claimant's symptoms
11 were inconsistent with his courses of treatment and generally normal
12 examination findings.¹⁵⁹

13
14 The ALJ then went on to note that Plaintiff's reported activities were also
15 inconsistent with his subjective complaints:

16 The claimant's allegations were further undermined by his reported
17 functioning. He wrote in both his February 2021 and January 2022
18 Function Reports that he could still perform many of his activities of
19 daily living, such as tending to his personal care, doing dishes,
20 laundry, and other household chores, driving himself, going
21 shopping, and managing his finances. He emphasized his difficulties
22 with being around others and social withdraw in those reports, but
23 noted that he lived with and spent time with family-members and
that he could run errands or leave his home unaccompanied. The
claimant testified to a similar degree of functioning at the September
27, 2023, hearing, noting that he played with his kids and that him
and his family occasionally go out, such as to restaurants. The
claimant's reported functioning—in combination with his courses of
treatment and generally normal examination findings—contrasted
sharply with the alleged limiting effects of his pain, problems with
being around others, and other symptoms and instead supported
that he could still perform and sustain a range of unskilled light
work. (Exhibits B4E, pages 2-9, and B7E, pages 2-9, see also Exhibit
B6F throughout.)¹⁶⁰

21 ¹⁵⁹ AR 28.

22 ¹⁶⁰ *Id.*

1 Plaintiff argues in his brief and reply that the ALJ erred in finding that
2 Plaintiff did not pursue further treatment and asserts that the ALJ was
3 impermissibly penalizing Plaintiff for not seeking treatment which he was unable
4 to afford.¹⁶¹ Plaintiff specifically argues that he was unable to see a specialist
5 because in order to be referred to a specialist he would first need to get an MRI and
6 that he would not be approved to get an MRI until he completed a course of
7 physical therapy.¹⁶² At the hearing, both Plaintiff and his counsel raised this issue
8 and both testified that Plaintiff could not attend physical therapy because the only
9 physical therapist in his city did not take his insurance.¹⁶³

10 However, the Commissioner, in his brief, first asserts that there is no
11 mention in the medical record that Dr. Roth considered sending Plaintiff to a
12 specialist or for an MRI.¹⁶⁴ The Commissioner also argues that even if Plaintiff
13 needed to go to physical therapy, as he alleges, Plaintiff lives within 18 miles of
14 Spokane and that there are a number of physical therapists who would be able to
15 treat him under his insurance.¹⁶⁵

18 ¹⁶¹ ECF Nos. 8, 17.

19 ¹⁶² *Id.*

20 ¹⁶³ AR 41, 45.

21 ¹⁶⁴ ECF No. 16.

22 ¹⁶⁵ *Id.*

1 The Court agrees with the Commissioner. There is no question in the record
2 that Plaintiff was covered under Medicaid during the relevant period, as Plaintiff
3 confirmed during his hearing testimony that he was covered.¹⁶⁶ Plaintiff's implied
4 assertion that he was unable to access care outside of his small town is belied by
5 the fact that he has regularly treated during the period in question with Dr. Roth,
6 whose office is located in Spokane. Additionally, Plaintiff's arguments that he was
7 unable to afford transportation to other cities fails because Plaintiff's Medicaid
8 coverage includes provisions for transportation to and from necessary medical
9 appointments if he cannot afford it himself.¹⁶⁷ If Plaintiff is physically able to
10 travel to Spokane to attend and appointment with Dr. Roth there is no reason that
11 he would be unable to travel to Spokane for physical therapy using a Medicaid
12 provided taxi. Neither Plaintiff nor his attorney offered testimony or evidence of
13 any sort that Plaintiff had ever even requested that he be provided transportation
14 to physical therapy appointments.

15 A claimant's course of treatment, including an inadequately explained
16 failure to seek treatment, is a relevant factor for the ALJ to consider when
17
18
19

20 ¹⁶⁶ AR 42.

21 ¹⁶⁷ Washington Health Care Authority, *Transportation services (nonemergency)*,
22 www.hca.wa.gov.

1 assessing the claimant's symptom reports.¹⁶⁸ Here, the ALJ permissibly considered
2 that Plaintiff did not seek treatment beyond the conservative care given him.

3 The Court also concludes that the ALJ did not err in considering Plaintiff's
4 consistent and repeated reports to Dr. Roth that his medication relieved not less
5 than 75% of his pain and up to 90% of his pain when considering the consistency of
6 his subjective claims.¹⁶⁹ A claimant's course of treatment, including whether
7 symptoms improved with treatment, is a relevant factor for the ALJ to consider
8 when assessing the claimant's symptom reports.¹⁷⁰ "[E]vidence of medical
9 treatment successfully relieving symptoms can undermine a claim of disability,"
10 and an ALJ may discount a claimant's reported symptoms if they sufficiently
11 improved with treatment.¹⁷¹

16 ¹⁶⁸ 20 C.F.R. § 416.929(c)(3).

17 ¹⁶⁹ AR 26, 367-400, 452-455, 456-508.

18 ¹⁷⁰ 20 C.F.R. § 416.929(c)(3). See *Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d
19 595, 599–600 (9th Cir. 1999) (considering evidence of improvement).

20 ¹⁷¹ See *Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017). See also 20 C.F.R.
21 § 416.913(c)(3); *Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 599–600 (9th
22 Cir. 1999) (considering evidence of improvement).

1 Objective medical evidence—signs, laboratory findings, or both—is a
2 relevant factor for the ALJ to consider when assessing a claimant’s symptoms.¹⁷²
3 An ALJ may consider discrepancies between a claimant’s reported symptoms and
4 the observations of treatment providers.¹⁷³ While an ALJ may not “reject a
5 claimant’s subjective complaints based *solely* on lack of medical evidence to *fully*
6 *corroborate* the alleged severity of pain,” the ALJ may discount subjective
7 complaints that are *inconsistent* with the objective medical evidence, so long as the
8 ALJ explains why the objective medical findings are inconsistent with the
9 claimant’s complaints.¹⁷⁴

10 Here, the ALJ cited to Dr. Roth’s medical records and to the fact that there
11 is no notation in his treatment records that Plaintiff had abnormal gait, motor
12 strength, or sensation – which are symptoms generally noted in the event of severe
13 musculoskeletal impairments. The medical records do not document any muscle
14 atrophy or pain response beyond spasm in the paraspinal muscles. While the Court
15 might interpret the record differently, it declines to find that the ALJ’s reasoning
16 was not supported by substantial evidence.

17
18 ¹⁷² 20 C.F.R. § 416.902(f); 3 Soc. Sec. Law & Prac. § 36:26, Consideration of
19 objective medical evidence (2019).

20 ¹⁷³ See *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996).

21 ¹⁷⁴ *Smartt*, 53 F.4th at 498 (quoting *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir.
22 2005) (emphasis added in *Smartt*)).
23

1 As to the ALJ's reasoning that Plaintiff's subjective claims were inconsistent
2 with his activities of daily living, the Court finds that the ALJ has adequately
3 explained his reasoning. If a claimant can spend a substantial part of the day
4 engaged in pursuits involving the performance of work-related functions, the ALJ
5 may find these activities inconsistent with the reported disabling symptoms.¹⁷⁵ The
6 ALJ highlighted that Plaintiff testified that he was able to shop, tend to his
7 personal care, drive himself, and do laundry.¹⁷⁶ The ALJ referenced Plaintiff's
8 written testimony in which he stated that he shopped three to four times a month
9 for about four hours and that he went out driving four times a week.¹⁷⁷

10 Although not noted by the ALJ, the Court additionally finds Plaintiff's
11 assertions that he was physically unable to attend physical therapy appointments
12 in Spokane to be unconvincing considering his many visits to Dr. Roth that took
13 place in Spokane.

14 Plaintiff's reliance on caselaw that holds it improper for an ALJ to discredit
15 testimony because of an ability to engage in ordinary, light, or sedentary activities
16 is misplaced. Here, Plaintiff alleged that he was unable to engage in even
17 sedentary activity.

18
19 ¹⁷⁵ *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) (superseded in part on
20 other grounds by statute).

21 ¹⁷⁶ AR 28.

22 ¹⁷⁷ AR 308.

1 Viewed in context, it is clear the ALJ did not simply discredit Plaintiff's
2 subjective claims regarding his all of his physical impairments due to lack of
3 treatment for his back condition. The ALJ properly considered the lack of
4 treatment for a back impairment along with considering other factors such as the
5 inconsistency with statements Plaintiff made to his medical provider that his pain
6 medication relieved most of his pain. The ALJ may discount a claimant's reported
7 disabling symptoms if he can spend a substantial part of the day engaged in
8 pursuits inconsistent with the reported disabling symptoms.¹⁷⁸ In this instance, the
9 Court concludes that the ALJ properly considered that Plaintiff's reported
10 activities were not consistent with his allegations of extreme limitation.

11 The Court concludes that the ALJ adequately explained his reasoning and
12 committed no error. The Court declines to remand as to this issue.

13 4. Summary

14 It is the ALJ's responsibility to review and evaluate the conflicting evidence
15 and Plaintiff's subjective complaints.¹⁷⁹ The ALJ meaningfully explained why he
16 evaluated Plaintiff's subjective complaints as he did, and these reasons are
17 supported by substantial evidence.

21 ¹⁷⁸ *Molina*, 674 F.3d at 1113.

22 ¹⁷⁹ *Tackett v. Apfel*, 180 F.3d 1094, 1102 (9th Cir. 1999).

C. Step five: The Court finds this issue moot.

Plaintiff alleges that because the ALJ erred in rejecting the opined limitations provided by Dr. Roth and by discounting Plaintiff's subjective testimony the ALJ gave a flawed hypothetical to the VE. Because the Court concluded that the ALJ did not err in either regard, this issue is moot.

IV. Conclusion

Accordingly, **IT IS HEREBY ORDERED:**

1. The ALJ's nondisability decision is **AFFIRMED**.
2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 8 and 16**, enter **JUDGMENT** in favor of **Defendant**, and **CLOSE** the case.

IT IS SO ORDERED. The Clerk's Office is directed to file this order and provide copies to all counsel.

DATED this 17th day of March 2025.



EDWARD F. SHEA
Senior United States District Judge